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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/548,308

04/12/2000

Jeff Wasilko

2585-003

6174

7590

07/14/2006

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EXAMINER

BOUTAH, ALINA A

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/548,308	<b>Applicant(s)</b> WASILKO, JEFF	
	<b>Examiner</b> Alina N Boutah	<b>Art Unit</b> 2143	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-10, 13, 18-20, 24 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-4, 11-12, 14-17, 23 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input checked="" type="checkbox"/> Other: <u>T.D. 4/10/06</u>           |

## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response to Applicant's amendment filed March 17, 2006. Claims 1-20 and 23-26 are pending in the application.

### ***Terminal Disclaimer***

The terminal disclaimer filed on April 10, 2006 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of USPN 6,850,968 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 11-12, 14-17, 23 and 25 rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6,850,968 issued to Pfeffer et al. (hereinafter referred to as Pfeffer).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the

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inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claim 1, Pfeffer teaches a method of moderating network servers in a network where electronic mail is retained for retrieval from at least one mail server, the method comprising:

permitting a mail request for a mail client to pass through a proxy server to the mail server (abstract); and

delaying subsequent mail requests for the mail client at the proxy server until a predetermined condition has been satisfied (abstract).

Regarding claim 2, Pfeffer teaches the method of claim 1, wherein the predetermined condition is a predetermined period of time (abstract).

Regarding claim 3, Pfeffer teaches the method of claim 2, wherein the predetermined period of time is dynamically determined based on the amount of traffic load on the network (abstract; col. 4, lines 15-20).

Regarding claim 4, Pfeffer teaches the method of claim 2, wherein the predetermined period of time is dynamically determined based on past behavior of the mail client (col. 9, lines 43-52).

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Regarding claim 11, Pfeffer teaches a method of moderating traffic load on network servers in a network where electronic mail is retained for retrieval from at least one mail server, the method comprising:

permitting a mail request for a mail client to pass through a proxy server to the mail server (abstract); and

delaying subsequent mail requests for the mail client at the proxy server until a predetermined condition has been satisfied (abstract);

wherein delaying subsequent mail requests includes attenuating transmission of the subsequent mail requests (abstract).

Regarding claim 12, Pfeffer teaches a method of moderating traffic load on network servers in a network where electronic mail is retained for retrieval from at least one mail server, the method comprising:

permitting a mail request for a mail client to pass through a proxy server to the mail server (abstract); and

delaying subsequent mail requests for the mail client at the proxy server until a predetermined condition has been satisfied (abstract);

wherein delaying subsequent mail requests is suspended in the event it is determined that a user is manually initiating rapidly repeated mail requests (claim 5 of Pfeffer).

Claims 14-17 are similar to claims 1-4, respectively, therefore are rejected under the same rationale.

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Claim 23 is similar to claim 12, therefor is rejected under the same rationale.

Claim 25 is similar to claim 11, therefor is rejected under the same rationale.

***Allowable Subject Matter***

Claims 5-10, 13, 18-20, 24 and 26 are allowed.

Regarding claims 5, 10 and 26, in combination with every limitation in the claim, the prior art of record does not teach transmitting a message to the mail client providing information that the mail client's mail requests will be delayed as a result of the mail client's past behavior.

Claims 6-9 depend on allowed claim 5, therefore are also allowed.

Regarding claims 13 and 24, in combination with every limitation in the claim, the prior art of record does not teach delaying subsequent mail requests being achieved by inserting multiple delays that are inserted at different points in mail protocol.

Claims 18-20 are allowed for the same reason as claims 5-9.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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